

**UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF VIRGINIA
(Alexandria Division)**

TRIANTAFYLLOS TAFAS,

Plaintiff,

v.

JON W. DUDAS, in his official capacity as Under-Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, and the UNITED STATES PATENT AND TRADEMARK OFFICE,

Defendants.

**CIVIL ACTION: 1:07cv846 (JCC/TRJ)
and Consolidated Case (below)**

SMITHKLINE BEECHAM CORPORATION,

Plaintiff,

v.

JON DUDAS, in his official capacity as Under-Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, and the UNITED STATES PATENT AND TRADEMARK OFFICE,

Defendants.

CIVIL ACTION: 1:07cv1008 (JCC/TRJ)

**PLAINTIFF TRIANTAYLLOS TAFAS'S
OBJECTION TO DEFENDANTS' WITHDRAWAL
OF ITS PARTIAL MOTION TO DISMISS BEING WITHOUT PREJUDICE**

Plaintiff Dr. Triantafyllos Tafas ("Plaintiff" or "Dr. Tafas"), through his counsel, Kelley Drye & Warren LLP, objects to Defendants' withdrawal of its Partial Motion to Dismiss (Dkt. No. 17) as being "without prejudice to Defendants raising any of the arguments in that motion...at later stages of the proceedings." *See* Notice of Withdrawal (Dckt. No. 55). While Dr. Tafas does not object to the withdrawal of that motion—especially since it was meritless to begin with—it would clearly be unfair to Dr. Tafas if the withdrawal is without prejudice.

The underlying merits of the arguments have been fully briefed. It would be unfair for Defendants to put Dr. Tafas through another expensive process of briefing the issues raised in the withdrawn Partial Motion to Dismiss given that Dr. Tafas has been through an expensive process already, only to have Defendants pull the rug out from under him on the eve of submitting the matter for decision, particularly with Defendants simultaneously purporting to reserve the right to litigate all the same issues later in the case.

Of course, Dr. Tafas has no substantive objection to Defendants' motion to dismiss being withdrawn from the case. However, he welcomes a genuine withdrawal of the motion. Otherwise, he may be unfairly shackled with the burden and expense of having to address the arguments raised in the Motion to Dismiss if Defendants are allowed to simply defer those to some indefinite future date. It is furthermore unclear from the statement in Defendant's notice of withdrawal, and thus unfair to Dr. Tafas, as to what pleading Defendants intends to file in lieu of the motion to dismiss (whether the exact same arguments will be raised in the new pleading) and when such pleading will be filed.

Respectfully submitted,

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Dated: November 8, 2007

CERTIFICATE OF SERVICE

I hereby certify that on November 8, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

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